

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1292

Citations Affected: IC 32-8-15.5-17; IC 32-30-15.

Synopsis: Government fiscal procedures. Conference committee report for EHB 1292. Amends statutes to reflect current practice relating to the duties of the auditor of state and the treasurer of state. Provides civil damages for actions related to agreements to locate unclaimed property or warrants. Allows the attorney general to sell unclaimed property at a commercially reasonable public sale. Allows unidentifiable unclaimed property and disclaimed property to be sold immediately and the proceeds transferred to the common school fund. Eliminates the attorney exemption for agreements to locate unclaimed property. Makes the time period for which unclaimed property related to child support is held the same as for other property. Makes certain other changes to the unclaimed property law. Provides that a lender may not be denied equitable subrogation solely because the lender had constructive notice of the intervening lien, the lien was released, or the mortgagee obtained title insurance. (This conference committee report requires the attorney general to adopt rules establishing the date by which an unclaimed property report must be filed and establishes procedures for legal actions that involve state liens or other encumbrances on real property. In addition, this report provides that a lender may not be denied equitable subrogation solely because the lender had constructive notice of the intervening lien, the lien was released, or the mortgagee obtained title insurance.)

Effective: July 1, 2002.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1292 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Page 2, line 10, strike "by the treasurer".
- 2 Page 2, line 10, delete "of state".
- 3 Page 3, line 7, after "his" delete "or".
- 4 Page 4, between lines 24 and 25, begin a new paragraph and insert:
- 5 "SECTION 7. IC 32-8-11-10 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) This chapter
- 7 does not limit:
- 8 (1) the right to assign, mortgage, or pledge the rents and profits
- 9 arising from real estate;
- 10 (2) the right of an assignee, a mortgagee, or a pledgee to collect
- 11 rents and profits for application in accordance with an assignment,
- 12 a mortgage, or a pledge; or
- 13 (3) the power of a court of equity to appoint a receiver to take
- 14 charge of real estate to collect rents and profits for application in
- 15 accordance with an assignment, a mortgage, or a pledge.
- 16 (b) A person may enforce an assignment, a mortgage, or a pledge of
- 17 rents and profits arising from real property:
- 18 (1) whether the person has or does not have possession of the real
- 19 estate; and
- 20 (2) regardless of the:
- 21 (A) adequacy of the security; or
- 22 (B) solvency of the assignor, mortgagor, or pledgor.

(c) If a person:

(1) enforces an assignment, a mortgage, or a pledge of rents and profits arising from real estate; and

(2) does not have possession of the real estate;

the obligations of a mortgagee in possession of real estate may not be imposed on the holder of the assignment, mortgage, or pledge.

(d) Except for those instances involving liens defined in IC 32-8-3-1, a mortgagee seeking equitable subrogation with respect to a lien may not be denied equitable subrogation solely because:

(1) the mortgagee:

(A) is engaged in the business of lending; and

(B) had constructive notice of the intervening lien over which the mortgagee seeks to assert priority;

(2) the lien for which the mortgagee seeks to be subrogated was released; or

(3) the mortgagee obtained a title insurance policy.

SECTION 8. IC 32-8-15.5-17, AS ADDED BY P.L.207-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 17. (a) This chapter applies to the release of a mortgage after June 30, 2001, and before ~~July 1, 2002~~ **July 1, 2003**, regardless of when the mortgage was created or assigned.

(b) This chapter expires July 1, 2003."

Page 9, line 1, strike "The report required by subsection (a) must be filed as follows:" and insert "**The attorney general shall adopt rules establishing the date by which a report required by subsection (a) must be filed.**".

Page 9, strike lines 2 through 7.

Page 14, after line 18, begin a new paragraph and insert:

"SECTION 19. IC 32-30-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 15. Actions Involving State Liens

Sec. 1. If:

(1) the state has a lien or other encumbrance on real property; and

(2) an action is brought concerning a lien or other encumbrance on the real property that has greater priority than the state's lien or encumbrance, including an action:

(A) involving foreclosure of the prior lien or encumbrance;

or

(B) that otherwise affects the lien or encumbrance of the state;

the lien or encumbrance of the state and its priority may be considered in the action and decided by the court.

Sec. 2. (a) In an action described in section 1 of this chapter, notice shall be sent to the state that contains the following:

(1) The names of the parties.

(2) A description of the lien or encumbrance of the state.

(3) The date by which the state must answer. However, the time in which the state is required to answer must be the same

as the time allowed for defendants who receive personal service in Indiana to file answers.

(4) If the lien or encumbrance is for an inheritance tax, the following, if known:

(A) The name of the decedent.

(B) The date of the individual's death.

(C) The state and county in which the individual resided on the date of death.

(D) The names and addresses:

(i) of the decedent's personal representatives; or

(ii) if personal representatives have not been appointed, of the decedent's heirs at law.

(5) If the lien or encumbrance involves:

(A) unpaid corporate taxes; or

(B) interest, costs, or penalties imposed on unpaid corporate taxes;

the name of the corporation that is required to pay the corporate taxes.

(b) The plaintiff, the plaintiff's attorney, or the court clerk shall issue the notice.

(c) If the lien or encumbrance of the state is for:

(1) a tax payable to the state or for any other right or claim of the state, the notice shall be served on the attorney general; or

(2) a recognizance entered into or a criminal conviction entered in a county in Indiana, the notice shall be served on the prosecuting attorney of the county in which the recognizance was entered into or the criminal conviction was entered.

(d) The notice must be accompanied by a copy of the complaint.

Sec. 3. (a) The state is not required to answer the notice described in section 2 of this chapter or the complaint attached to the notice.

(b) If the state fails to answer a notice described in section 2 of this chapter or the complaint attached to the notice, the failure may not be considered:

(1) a waiver of any rights the state may have at law;

(2) grounds for a default judgment against the state; or

(3) grounds for summary judgment or any other dispositive judgment that otherwise extinguishes the state's lien or encumbrance.

Sec. 4. (a) If the state answers a notice described in section 2 of this chapter or otherwise appears before the court in the case:

(1) the action shall proceed as in other cases; and

(2) a judgment in the case binds the state, and the lien or other encumbrance of the state may be released in the same manner as if the judgment had been entered against an individual.

(b) If the state does not answer the notice described in section 2 of this chapter or the complaint attached to the notice or does not otherwise appear before the court in the case:

(1) the action shall proceed as in other cases; and

(2) the lien or other encumbrance of the state identified in the complaint shall be:

1 (A) explicitly recognized in its proper priority in any order
2 of the court that affects the lien or other encumbrance of the
3 state; and

4 (B) paid out of any surplus remaining after liens or other
5 encumbrances that are superior to the lien or encumbrance
6 of the state are paid.

7 (c) In an action to quiet title obtained by a tax deed issued as a
8 result of a sale for taxes or another municipal lien, or in an action
9 involving strict foreclosure, a judgment may be entered that
10 extinguishes a lien or other encumbrance of the state on the real
11 property described in the complaint if:

12 (1) the state does not answer;

13 (2) a disclaimer is filed by the state; or

14 (3) the court determines that any part of the lien for the taxes
15 or other municipal lien that is foreclosed is superior to the lien
16 or encumbrance of the state."

17 Renumber all SECTIONS consecutively.

(Reference is to EHB 1292, as reprinted February 26, 2002.)

Conference Committee Report
on
Engrossed House Bill 1292

Signed by:

Representative Sturtz
Chairperson

Senator Bray

Representative Foley

Senator Alexa

House Conferees

Senate Conferees